IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 429 (S/B) 2001
(Old No. 48638/2000)

Date of decision: 23rd October 2003

For the approval of:

Hon'ble Chief Justice S.H. Kapadia.

Hon'ble Mr. Justice M.M. Ghildiyal.

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

(Gurpreet)
P.A.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 429 (S/B) 2001 (old no.48638/2000)

Union of India
Through Controllerate of Quality Assurance
(Instruments),
Raipur, District Dehradun. ……. Petitioner

Versus

1. Shri Kotwal Singh Rawat (Retd.),
   S/o Shri (late) Sher Singh,
   R/o Village Adhoiwala-2,
   47 Sumanpuri, Sahastradhara Road,
   Dehradun – 248001.
2. The Central Administrative Tribunal,
   Allahabad Bench, Allahabad. …… Respondents

Mr. G.S. Bisht, Sr. Standing Counsel, Govt. of India for the petitioner.
Mr. N.S. Pundir, i/b Mr. V.B.S. Negi, Advocate for the respondent No. 1.
None for the respondent No. 2.

Coram: Hon'ble S.H. Kapadia, C.J.
Hon'ble M.M. Ghildiyal, J.

Date: 23.10.2003

ORAL JUDGMENT: (Hon'ble S.H. Kapadia, C.J.)

1. Union of India has filed this Writ Petition challenging the judgment dated 22nd August 2000 passed by the Central Administrative Tribunal, Allahabad in Original Application No. 930 of 1991.

1. **FACTS:**

Kotwal Singh Rawat was recruited to the post of tracer on 24th July 1957 with effect from 24th May 1957 against reserved vacancy. Kotwal Singh Rawat filed a caste certificate dated 5th May 1956 in support of his claim that he was a Rawat from Dehradun. That Certificate was issued by the District Magistrate, Dehradun. As per the Certificate, Kotwal Singh Rawat belonged to the Rawat community, which was recognized as a Schedule Caste under the Constitution (Schedule Caste) Order 1950. As per the Certificate,

Kotwal Singh Rawat resided in Dehradun in state of U.P. On 22nd February, 1975 the District Magistrate wrote a letter to the Controller to return the above case certificate on the ground that it had been wrongly issued as Rawats were Rajputs in Garhwal and that they were no Schedule Castes. Consequent upon the said decision of the District Magistrate, Kotwal Singh Rawat was removed from services on 23.3.1979. He challenged the Order of Removal by filing a writ petition in the Allahabad High Court. On 14th March 1984, the Allahabad High Court set aside the order to removal on the ground of violation of rules of natural justice in passing the order of removal. In the meantime, Kotwal Singh Rawat reached the age of superannuation on 31st December 1982. However, pursuant to the orders passed by the High Court, show cause notice was issued on 18th August 1989 by the Government to Kotwal Singh Rawat as to why his full pension should not be withheld. Thereafter inquiry was held. On 18th March 1991, it was decided to withhold 50% of the pension of Kotwal Singh Rawat. Being aggrieved, Kotwal Singh Rawat moved Central Administrative Tribunal, Allahabad, which has passed the impugned Order on 22nd August 2000 against which, Union of India has filed this Writ Petition.

3. <u>ARGUMENTS:</u>

Mr. Bisht, learned Standing Counsel for Union of India contended that under Rule 9(1) of Central Civil Service Pension Rules 1972, the Government was entitled to withhold pension if the pensioner is found guilty of grave mis-conduct or negligence during the period of service. He argued that under Aritcle 341 of the Constitution, concession is given to the Schedule Caste. That the Rawats did not belong to the Schedule Caste and Kotwal Singh Rawat had procured a false certificate from the District Magistrate pursuant to which, he was appointed against the reserved vacancy. He contended that this was a grave mis-conduct under Rule 9(1) of the above Rules 1972. He submitted that the Government was right,

under the Constitution, in withholding 50% of pension payable to Kotwal Singh Rawat.

4. FINDINGS:

We do not see any reason to interfere with the order passed by Central Administrative Tribunal, Allahabad. Firstly, the Presidential Notification / Order of 1950 showed Rawats as Schedule Caste. In 1950, Dehradun was a part of state of U.P. Even today, after 9th November 2000 (when the State of Uttaranchal was created), Rawats continue to be Schedule Caste in U.P. In this case, when Kotwal Singh Rawat was appointed on 24th July 1957, the Presidential Order of 1950 was in force and under the Order "Rawats" were shown as Schedule Caste. Therefore, there was no willful mis-representation when Kotwal Singh Rawat procure the caste certificate from the District Magistrate. Secondly, in the caste certificate, it is stated that Kotwal Singh Rawat was a Rawat from Dehradun. Therefore, there was no mis-representation. We can understand the case of Kotwal Singh Rawat declaring himself to be a Rawat from Rajasthan where Rawats are Schedule Caste. In this case, that is not so. In this case, Kotwal Singh Rawat got the certificate from the District Magistrate, which states that he was from Dehradun. Hence, there is no merit in the argument advanced on behalf of the Government that Kotwal Singh Rawat had committed grave mis-conduct. Kotwal Singh Rawat went by the Presidential Order 1950, which was clarified by the Schedule Caste Commission in 1975 by which time, Kotwal Singh Rawat had put in several years of service. In fact, the setting up of Schedule Caste Commission to ascertain the status of Rawats, itself, shows that there were lot of disputes on this point. The matter was ultimately settled in 1975. Therefore, this is not a case of grave mis-conduct in terms of Rule 9(1) of Central Civil Service Pension Rules 1971. I n this case, we are not concerned with the object of Article 341 of the Constitution. It cannot be disputed that concession are available only to Schedule Caste and that no citizen was entitled to fraudulently obtain such concessions. However, in this case there is

no willful mis-representation on the part of Kotwal Singh Rawat. Kotwal Singh Rawat had gone to the District Magistrate. He had informed the District Magistrate that he was a Rawat. He had also informed the District Magistrate that he was from Dehradun. The District Magistrate gave the caste certificate because in the state of U.P., Rawats belong to Schedule Caste community. The Certificate was given as far back as 5th May 1956. At that time, Dehradun was a part of state of U.P. It is later on because of agitation that Schedule Caste Commission was constituted to look into the matter. That Commission clarified the position in 1975. Therefore, we do not see any reason to interfere with the order passed by Central Administrative Tribunal, Allahabad.

5. For aforestated reasons, the Writ Petition is dismissed. No order as to costs.

(M.M. Ghildiyal, J.) **(S.H. Kapadia, C.J.)**

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